Editor's note: Reconsideration denied by order dated Feb. 19, 1982

RUSKIN LINES ET AL.

IBLA 81-465 Decided January 26, 1982

Appeals from a decision of the Arizona State Director, Bureau of Land Management, designating inventory units AZ-040-022/023/024 A and AZ-040-022/023/024 B as wilderness study areas.

Affirmed.

HEADNOTES:

1. Federal Land Policy and Management Act of 1976: Wilderness--Wilderness Act

   Sights and sounds outside a wilderness study area will be considered during the study phase of the wilderness review process absent a finding by BLM during the inventory phase that such impacts are adjacent to the unit and are so extremely imposing that they cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned.

2. Federal Land Policy and Management Act of 1976: Wilderness--Wilderness Act

   Where the record evidences BLM's firsthand knowledge of the lands within an inventory unit and contains comments from the public as to the area's fitness for wilderness preservation, BLM's subjective judgment of the area's naturalness qualities and its subjective determinations as to whether the area possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation are entitled to considerable deference.

3. Federal Land Policy and Management Act of 1976:
Wilderness--Wilderness Act

The argument that a wilderness study area would be better utilized for a flood control project is premature during the inventory phase of the wilderness review process. During the study phase, BLM will determine the suitability or nonsuitability of each wilderness study area for wilderness preservation. This determination, made through BLM's land use planning system, will consider all values, resources, and uses of the public lands.

APPEARANCES: Ruskin Lines, pro se; Hugh G. Hamman, Chairman, Graham County Board of Supervisors; Glenn Burgess, Chairman, Upper Gila River Association; Dale D. Goble, Esq., Office of the Solicitor, U.S. Department of the Interior.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Ruskin Lines appeals from a decision of the Arizona State Director, Bureau of Land Management (BLM), dated March 12, 1981, denying his protest of the designation of inventory units AZ-040-022/023/024 A and AZ-040-022/023/024 B as wilderness study areas (WSA's). Lines' protest followed the State Director's announcement in the Federal Register that 94 units had been designated WSA's statewide. 45 FR 74066 (No. 7, 1980). In addition, the Graham County Board of Supervisors (county) and the Upper Gila River Association (association) have each filed notices of appeal from the State Director's designation of unit AZ-040-022/023/024 A as a WSA. The file contains the State Director's denial of the protest by the county but is lacking a similar denial of the association's protest.

Appellant Ruskin Lines has appealed BLM's denial of his protest on a number of grounds:

1. Private lands within unit AZ-040-022/023/024 B, also known as the Turtle Mountains unit, contain a house and millsite.

2. Smoke and fumes from the nearby Phelps Dodge mining operation enter the WSA's at issue and disqualify each from wilderness preservation.

3. The WSA's have unusual boundary figurations which preclude effective management of the land by BLM.

4. Evidence of man's work, activity, industry, and habitations disqualifies each WSA from wilderness preservation.

5. No outstanding opportunities for solitude or a primitive and unconfined type of recreation exist in the units on appeal because of

the extensive mining outside WSA borders and because of the nondistinctive nature of the lands.

[1] The private lands which appellant maintains disqualify the Turtle Mountains unit from wilderness preservation are not and have never been subject to wilderness review. Section 603(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782 (1976), requires the Secretary of the Interior to review those roadless areas of 5,000 acres or more of the public lands identified during the inventory required by section 201 of the Act as having wilderness characteristics described in the Wilderness Act of September 3, 1964, 16 U.S.C. § 1131(c) (1976). Private lands are not within the scope of the Secretary's review authority. The fact that private lands are surrounded by public lands on all sides does not automatically preclude a WSA designation of the public lands.

Sights and sounds originating from private or state inholdings technically emanate from land outside the inventory unit and are treated by BLM as if so occurring. Organic Act Directive (OAD) 78-61, Change 2, June 28, 1979, at 3. BLM's practice is to assess the imprints of man outside unit boundaries during the inventory stage only in situations where the imprint is adjacent to the unit and its impact is so extremely imposing that it cannot be ignored, and if not considered, reasonable application of inventory guidelines would be questioned. OAD 78-61, Change 3, July 12, 1979, at 4.

The Turtle Mountains WSA totals some 17,422 acres. Appellant's allegation of a single house on a 115-acre parcel of private land and a 5-acre millsite whose present use is not alleged evoked from BLM the comment that such factors will be considered during the study phase of the wilderness review process. Appellant's reiteration of these factors on appeal does not persuade us that BLM has erred. Generally, the imprints of man which occur outside a unit are considered during the study phase, as set forth by the above-cited OAD's. The study phase begins upon completion by BLM of its inventory duties. While appellant's argument may ultimately cause BLM to recommend the WSA's at issue as unsuitable for wilderness preservation, it is premature at this time. Rather than demonstrate error on appeal, appellant has simply reiterated his disagreement with a subjective decision of BLM. More than simple disagreement with BLM's subjective conclusions is required to reverse BLM's actions or place a factual matter at issue. Sierra Club, 58 IBLA 159 (1981). See also Conoco, Inc., 61 IBLA 23 (1981).

The allegation of smoke and fumes from the Phelps Dodge mining operation at Morenci, an allegation joined in by the county, was considered by BLM during the 90-day comment period preceding WSA designations. After a reevaluation of the sights and sounds of the Morenci copper mine, BLM dropped 6,152 acres from inventory unit AZ-040-022/023/024 A, also known as the Gila Box unit. Thus the acreage of the Gila Box WSA is 13,470 acres. BLM's response during the protest period to further allegations of smoke and fumes by appellant was to inform appellant that the effects of the Morenci mining operation were not overwhelming when considering "the distance from the unit to the source of the

impact; the angle of viewing, which decreases the sight of the impact; color of the mine dumps; frequency of occurrence and intensity of the smoke and fumes and the inability to see the impact from most areas within the unit." The issue of whether the impacts of the Morenci mining operation are so extremely imposing that they cannot be ignored calls for a highly subjective determination by BLM. The elimination of 6,152 acres from that portion of the Gila Box inventory unit closest to the Morenci mine is an acknowledgement by BLM of the substantial impacts of the Morenci mine. With the elimination of the acreage, however, we are inclined to defer to BLM's judgment that the mining operation is not now so extremely imposing that it cannot be ignored. Our affirmance of BLM's protest response postpones further consideration of the Morenci impacts to the study phase of the wilderness review process. During the study phase, WSA boundaries may be adjusted in recognition of intrusive outside sights and sounds. Appellant's participation in the study phase is invited. 45 FR 75574, 75575 (Nov. 14, 1980).

Appellant's third argument on appeal, viz., that the WSA's at issue have unusual boundary figurations so as to preclude BLM from effectively managing such lands, has been addressed in part by this Board's decision in National Outdoor Coalition, 59 IBLA 291 (1981). Therein at page 297, in response to the argument that a WSA must possess a regular, geometrical shape, we held that section 603(a) of FLPMA does not require any particular shape for a WSA. The fact that the boundaries of a WSA may be formed by irregular roads or intrusions does not by itself preclude a WSA designation. The past practice of Congress in designating wilderness areas with irregular boundaries contributed to our holding. Appellant's allegation that management of the subject WSA's would be an "administrative nightmare" is unsupported in his arguments on appeal.

[2] Similarly unconvincing are appellant's allegations that the imprints of man disqualify the units under appeal from WSA designation. While BLM acknowleges that imprints of man exist in both units in the form of range improvements and ways, it maintains that such imprints are not substantially noticeable. BLM's use of the "substantially noticeable" standard is derived from section 2(c) of the Wilderness Act, 16 U.S.C. § 1131(c) (1976). Therein, Congress set forth the definition of wilderness:

> A wilderness, in contrast with those areas where man and his own works dominate the landscape, is hereby recognized as an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain. An area of wilderness is further defined to mean in this chapter an area of undeveloped Federal land retaining its primeval character and influence, without permanent improvements or human habitation, which is protected and managed so as to preserve its natural conditions and which (1) generally appears to have been affected primarily by the forces of nature, with the imprint of man's work substantially unnoticeable; (2) has outstanding opportunities for solitude or a primitive and unconfined

> type of recreation; (3) has at least five thousand acres of land or is of sufficient size as to make practicable its preservation and use in an unimpaired condition; and (4) may also contain ecological, geological, or other features of scientific, educational, scenic, or historical value.

This definition is ample support for the proposition that a WSA need not be free of all intrusions. Naturalness is present in a WSA if the area "generally appears to have been affected primarily by the forces of nature with the imprint of man's work substantially unnoticeable." (Emphasis added.) The underscored language, taken verbatim from section 2(c), illustrates the highly subjective judgment which BLM must make in determining whether an area possesses the quality of naturalness. In the present case, this judgment was entrusted to BLM personnel whose reports evidence firsthand knowledge of the land. Assisting BLM were comments from numerous groups and individuals whose interests span a broad spectrum. BLM's judgment in such matters, we feel, is entitled to considerable deference. Such deference will not be overcome by an appellant expressing simple disagreement with a subjective conclusion of BLM. This is not to suggest that we abdicate our review of subjective wilderness judgments. As the delegate of the Secretary's review authority, such abdication would be improper. We do mean to suggest, however, that an appellant seeking to substitute its subjective judgments for those of BLM has a particularly heavy burden to overcome the deference we accord to BLM in such matters. Appellant's arguments are lacking in detail and do not meet this burden. C & K Petroleum Co., 59 IBLA 301 (1981); Richard J. Leaumont, 54 IBLA 242, 245, 88 I.D. 490, 491 (1981).

Appellant's final argment is the contention that the two units on appeal lack outstanding opportunities for either solitude or a primitive and unconfined type of recreation. In support of the allegation that solitude is lacking, appellant refers to mining operations beyond WSA boundaries. Our discussion, infra, of sights and sounds outside a WSA is equally applicable here. Allegations as to the opportunities for a primitive and unconfined type of recreation reduce to the statement that the lands are not distinctive or different from thousands of acres in the southwest.

In contrast, BLM's narrative summary alludes to the many deep canyons and drainages which screen out the Morenci mine and provide outstanding opportunities for solitude. Also listed are examples of primitive and unconfined types of recreation available in the units, e.g., hiking, hunting, photography, and birdwatching.

The argument posed by appellant illustrates once again the highly subjective nature of the determination which BLM is required to make. In this respect, the issue is similar to the question discussed above whether the unit possesses the quality of naturalness. Our resolution of this issue follows similar lines. We believe that BLM's judgment as to whether a unit possesses outstanding opportunities for solitude or a primitive and unconfined type of recreation is entitled to considerable deference. By this statement, we do not mean to imply that BLM's judgment will be immune from review. To the contrary, BLM's

documentation for its judgments will be carefully studied, as will the documentation of an appellant. An appellant will have a particularly heavy burden to support a reversal of BLM's subjective conclusions. We cannot say that appellant has met this burden on the issue of the unit's outstanding opportunities for solitude or a primitive and unconfined type of recreation. 1/

[3] The thrust of the appeals by the Graham County Board of Supervisors and the Upper Gila River Association is the contention that the Gila Box unit would be better utilized as the site of the Camelsback Dam Flood Control Project than as a wilderness area. According to the county's statements, the Army Corps of Engineers requested in 1961 that land within this unit be "set aside" for the construction and operation of the Camelsback Dam. Appellants also state that the project is still authorized by Congress. The record reveals, however, that no withdrawal of the area is in effect. Delays in "implementing Congressional authorization," the county maintains, are caused by the need to reevaluate environmental consequences and the economic justification of the project.

The competing uses for lands within the Gila Box unit are properly addressed during the study phase of the wilderness review process. As set forth in BLM's Wilderness Inventory Handbook, the study phase involves the process of determining which areas will be recommended as suitable for wilderness designation and which will be recommended as nonsuitable. These determinations, made through BLM's land use planning system, consider all values, resources, and uses of the public lands. Appellants' comments are, accordingly, premature at this time, but should be especially valuable to BLM during the study phase. Comments of this nature are invited during the study phase. 45 FR 75574, 75575 (Nov. 14, 1980).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions of the State Director are affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

Gail M. Frazier
Administrative Judge

1/ Our discussion above of the issues raised by appellant may be construed as a denial of appellant's motion for summary dismissal, for a hearing before an Administrative Law Judge, and for a view of the subject areas.